

CR-8757 of 2015

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In the High Court of Punjab and Haryana at Chandigarh

CR-8757 of 2015(O&M)

Date of Decision: 30.11.2016

Subhash Chander @ Subhash Mohan

---Petitioner

vs.

Balwinder Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Akhilesh Vyas, Advocate
for the petitioner
Mr. Veneet Sharma, Advocate
for respondent Nos. 1 and 2

Rekha Mittal, J.

The present petition directs challenge against order dated 27.11.2015 (Annexure P-6) passed by the Additional Civil Judge (Senior Division), Amritsar whereby application filed by the petitioner/defendant No. 1 for setting aside ex parte proceedings has been dismissed.

Counsel for the petitioner has submitted that though the petitioner is residing in Uttar Pradesh but he was sought to be served at the address of Amritsar where his other relatives are residing. It is further

submitted that in case the petitioner is permitted to join the proceedings, he would make a statement before the trial court adopting the written statement, filed by Ramesh Kumar defendant No. 2 or/and other defendants and thereafter adduce evidence being a party to the suit. It is further submitted that the petitioner would not ask for cross examination of the witnesses already examined by the plaintiffs or his co-defendants till date.

Counsel for the respondents/plaintiffs, on the contrary, has submitted that the trial court has rightly held that the petitioner has not been able to substantiate his plea that he was residing in Uttar Pradesh or was not residing at the given address. It has further been argued that the present application is nothing but a device to delay outcome of the suit filed by the respondents/plaintiffs seeking possession by way of specific performance of agreement to sell dated 25.9.2006 in respect of land measuring 06 kanlas 16 marlas, detailed in head note of the plaint.

I have heard counsel for the parties, perused the paper book particularly the order impugned.

Be that as it may, it is an undisputed position in law that if a defendant has been proceeded against ex parte, he can join the proceedings

at any stage, In the case at hand, the petitioner filed an application for setting aside ex parte proceedings at a stage when the case was still pending for recording evidence of the respondents/plaintiffs. However, keeping in view the limited prayer made by counsel for the petitioner coupled with the principle of natural justice and fair opportunity, the petition is partly allowed by permitting the petitioner to get recorded his statement before the trial court adopting the written statement, filed by Ramesh Chand defendant No. 2 or/and other defendants and thereafter to adduce evidence being one of the defendants in the case. However, it is clarified that the petitioner shall not be entitled to seek recalling of any of the witnesses examined by the respondents/plaintiffs or his co-defendants for the purpose of cross examination.

(Rekha Mittal)
Judge

30.11.2016
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No